

Office of the State Comptroller
Debt Issuance Approval Policy Statement and Guidelines

Many public benefit corporations (including public authorities) and certain local governments must obtain the approval of the State Comptroller (“OSC”) before selling certain bonds, notes, or both, at private or negotiated sale. These requirements are imposed separately in dozens of provisions of the Public Authorities Law and in several provisions of the Local Finance Law¹. In addition, service contracts and other financing agreements with the State, entered into in connection with State-supported public authority debt, are subject to the OSC’s approval pursuant to section 112 of the State Finance Law.

In general, the purpose of the Comptroller’s private or negotiated sale approval function is to protect the interests of the State and local taxpayers by ensuring that the total cost of the borrowing to the issuer is reasonable and appropriate. As a result, the Comptroller’s review of private and negotiated sales may encompass any factor that affects, or potentially affects, an issuer’s cost of borrowing.

The purpose of this Policy Statement and Guidelines (“Guidelines”) is to describe OSC’s private or negotiated sale review process, as well as the type of information that is normally required by OSC to conduct this review. The purpose of the accompanying revised Debt Issuance Approval Request Form (“Approval Form”) is to streamline the review process by clarifying the information that must be submitted to OSC to obtain approval of a private or negotiated sale.

¹ See Appendix 1 for statutory references to the Comptroller’s approval functions for public authorities and Appendix 2 for statutory references for local governments.

Applicability

These Guidelines and the accompanying Approval Form apply to all public benefit corporations and public authorities that are required to obtain the Comptroller's approval as a condition precedent to selling bonds or notes at private or negotiated sale². These documents also apply to local governments having general authority to sell bonds or notes at private or negotiated sale subject to the Comptroller's approval³.

The procedures set forth in the Guidelines and the Approval Form do not apply to submissions for approvals required for advance refundings undertaken by local governments pursuant to section 90.10 of the Local Finance Law. The process for obtaining approvals required under section 90.10 of the Local Finance Law is set forth in the OSC document titled "Simplified Procedures for Local Governments Seeking the Comptroller's Approval of Certain Matters Relating to Refunding Local Debt Pursuant to Sections 90.00 and 90.10 of the Local Finance Law," as revised from time-to-time. It should be noted, however, that the factors considered by OSC when reviewing the terms and conditions of private or negotiated sales of refunding bonds pursuant to section 90.10 will be the same as those described below in these Guidelines, except that such factors will not include a review of cash flow savings or dis-savings during the amortization period because of the separate requirement in section 90.10 that OSC approve a certificate setting forth the present value of the total debt service savings.

² See Appendix 1.

³ See Appendix 2.

These Guidelines and the Approval Form also do not apply to submissions for approvals required in connection with private sales of variable rate obligations and discount bonds conducted, respectively, pursuant to sections 54.90(b) and 57.00(f) of the Local Finance Law. These transactions are governed by rules promulgated pursuant to section 57.10 of the Local Finance Law as 2 NYCRR 37.

OSC, for good cause, may waive requirements contained within these Guidelines in instances where a public benefit corporation is issuing bonds or notes at private or negotiated sale for the benefit of a third party that is a private entity.

The Review Process

When considering whether to approve a private or negotiated sale, OSC will review the terms of the bonds or notes, and the terms and conditions of the sale. The terms and conditions of the sale include all costs of issuance paid or to be paid directly or indirectly by the issuer, including underwriters' expenses, and expenses attributable to derivative and hedge transactions such as "swaps," "interest rate locks," "caps," "floors," "collars," and similar arrangements which affect, or have the potential of affecting, the issuer's cost of borrowing. Because the purpose of OSC's private and negotiated sale review is to ensure that the total cost of the borrowing to the issuer is reasonable and appropriate, OSC will not ordinarily consider the risk incurred by issuers and conduit borrowers from derivative and hedge transactions undertaken in connection with a private or negotiated sale of bonds or notes. In the event that OSC becomes aware of any such risks during the course of its review, however, OSC, at a minimum, may comment separately on those risks. Moreover, these risks may be considered in connection with State-supported debt, in the context

of OSC's review of service contracts and other financing agreements with the State pursuant to section 112 of the State Finance Law.

More specifically, when deciding whether to approve a private or negotiated sale of bonds or notes, OSC generally considers the following factors, taking into account the nature, size, structure and complexity of the transaction:

- The reasonableness of the underwriter's spread including underwriter expenses, such as underwriter's counsel, and also including any underwriter's expenses that might be directly billed to the issuer;
- The reasonableness of the costs of issuance paid by the issuer or paid from the proceeds of the bonds or notes;
- The reasonableness of the yields based on market conditions at the time of pricing, based on a comparison to pertinent indices such as MMD, Treasuries, LIBOR, or other comparable financing transactions;
- In the case of refundings subject to these Guidelines (e.g. refundings not undertaken pursuant to section 90.10 of the Local Finance Law), the reasonableness of the savings and savings structure, with the goal of a structure that produces no cash flow dis-savings in any year during the amortization period; and
- In the case of derivative and hedge transactions undertaken in connection with a private or negotiated sale of bonds or notes, whether or not undertaken simultaneously with the sale of the obligations, the reasonableness of the terms of the derivative or hedge transactions, including the cost to the issuer, and the amount of payments from the proceeds of the bonds.

The above list of factors is not exhaustive. Additional factors may be considered in appropriate circumstances. In addition, the above list of factors is subject to revision at the discretion of the State Comptroller.

Procedurally, the review process begins with OSC receiving an Approval Form from an issuer. If any party other than the issuer provides an Approval Form or any other information related to the transaction, the issuer must be included in the correspondence with OSC. Issuers must submit the Approval Form to the OSC Debt Management Bureau (“Bureau”). Whenever possible, the Approval Form should be submitted electronically. The Approval Form must be submitted initially to the Bureau no later than 5 business days prior to the planned date of sale of the bonds or notes. As additional information required by the Approval Form and these Guidelines becomes available during the 5 business days leading up to the pricing, such information should be sent to the Bureau in order to expedite the approval process on the day of pricing. Except for the information specifically attributable to the actual pricing (i.e final par amount, rates and yields, amortization schedules, savings analysis and true interest cost), all other information on the Approval Form is to be submitted to OSC no later than one business day prior to the pricing. If an issuer anticipates being unable to comply with this requirement, the issuer must contact the Bureau no later than three business days prior to pricing to explain why the requirement cannot be met.

In the event that different series or sub-series of bonds are to be issued as part of one common transaction, if possible, a separate Approval Form should be submitted for each series or sub-series. Because of the potential complexity of such transactions, the Approval Forms should be submitted as far in advance of 5 business days before the sale as is reasonably practical and

contain such information as is available at the time of submission. To the extent practicable, OSC will evaluate all of the issuances collectively.

As soon as possible after the bonds are priced, an issuer must submit to the Bureau a fully completed Approval Form containing all the information required by the Approval Form and these Guidelines, accompanied by as many of the documents required by the Guidelines and Approval Form as are available at the time of submission. Upon receipt of such information and documents, the Bureau will make an initial determination as to whether to approve the private or negotiated sale. The Bureau will make every effort to complete the initial approval process as soon as practicable, but ordinarily will require a minimum of three hours from the completion of the issuer's submission. If the process extends beyond OSC normal working hours (9am to 5pm), the Bureau will endeavor to complete the initial approval process on the next business day. In order to permit the issuer to execute the bond purchase agreement, the Bureau will express its initial approval by making a notation on the Approval Form and thereafter will send a copy of the notated Approval Form by fax or email to the issuer.

Following receipt of the Approval Form with the Bureau's initial approval noted thereon, and as soon as possible prior to the closing, the issuer must submit to the Bureau any remaining information and documents required by the Approval Form and these Guidelines, plus two originals of the official closing letter for execution by OSC. Final approval by the Comptroller shall be indicated by the Bureau executing the closing letter. Execution of the closing letter, and the Comptroller's final approval, are conditional upon the Bureau receiving all such remaining information and documents. Such remaining information and documents, and the content of the closing letter, must be consistent with, and not materially different from, each other and the

information and documents on which the Bureau based its initial approval. The official closing letter must also contain the following statement: “The Comptroller’s approval of this private or negotiated sale of bonds or notes does not constitute an approval, or opinion as to either the legality or effect, of any other matter, including the risk to the issuer of any derivative or hedge transactions undertaken in connection with such sale.” Upon completion of the issuer’s submission, and a determination by the Bureau that such remaining information and documents, and the content of the closing letter, are consistent with, and not materially different from, each other and the information on which the Bureau based its initial approval, the Bureau will execute original closing letters. The Bureau will retain an executed closing letter for its files and after sending a pdf copy by email or fax to the issuer, will return the other original(s), if any, by mail or by the issuer’s courier.

Any derivative or hedge transaction that has been or will be entered into in connection with a private or negotiated sale of bonds or notes will be reviewed as part of the approval process of the sale of the bonds or notes. **If a derivative or hedge transaction is entered into before approval of the sale of the bonds or notes, the issuer puts the derivative or hedge transaction at risk of default if for any reason the sale of the bonds or notes is not approved.** To facilitate the approval process of the sale of the bonds or notes, and minimize the possibility that approval will be withheld because of a prior derivative or hedge transaction, an issuer should notify the Bureau of the proposed details of any derivative or hedge transaction that will take place prior to the sale of the bonds or notes.

For transactions governed by Article 5-D of the State Finance Law, the issuer shall submit to the Bureau a certification by a financial advisor to the effect that the terms and conditions of the interest rate exchange or similar agreements reflect the fair market value of the agreement as of the

date of its execution. In the event that the issuer fails to submit a satisfactory certification, the Bureau will review the reasonableness of the pricing of the interest rate exchange agreement or similar agreement.

In the case of all other issuers and derivative or hedge transactions, the issuer must submit to the Bureau documentation verifying that the derivative or hedge transaction is legally authorized (i.e., statutory authorization governing board resolution and/or such other documentation as may be required by the Bureau). The issuer must also submit to the Bureau a certification by a financial advisor to the effect that the terms and conditions of the derivative or hedge agreement reflect the fair market value of the agreement as of the date of its execution and a certified copy of the policies and guidelines governing the use of derivative and hedge transactions formally adopted by the issuer. In the event that an issuer fails to submit a satisfactory certification and policies and guidelines, the Bureau will review the reasonableness of the pricing of the derivative or hedge agreement.

If the issuer selects to submit the pricing terms to OSC after the execution of the derivative or hedge transaction, the issuer puts the derivative or hedge transaction at risk of default if for any reason the pricing is determined not to be reasonable. The issuer will be advised by the Bureau whether such pricing could preclude approval of the subsequent sale of bonds or notes.

Information Required

To obtain approval of a private or negotiated sale of bonds or notes, the following information must be submitted to the Bureau:

- A fully completed Approval Form, which can be found on the State Comptroller's website at:
<http://www.osc.state.ny.us/pension/debtapprovals.htm>
- A description of the debt issuance, including any related derivative or hedge transactions, as well as the preliminary official statement in electronic format, if available, followed by the final official statement when available;
- Number runs pertaining to the debt issuance, including but not limited to the following: (i) sources and uses schedule; (ii) bond summary statistics schedule; (iii) schedule detailing components of underwriter's spread (including itemization of miscellaneous underwriter expenses billed directly to the issuer, or billed to a conduit borrower), and a takedown-by-maturity schedule; (iv) schedule detailing all costs of issuance; (v) bond pricing schedule that summarizes maturity dates, par amounts, coupon rates and yields; (vi) debt service schedule; (vii) for refundings, savings schedule(s) that disclose annual cash flow savings, aggregate present value savings and present value savings as a percentage of refunded par; and (viii) depending on the complexity of the transaction, such additional number runs as may be requested;
- If the debt issuance is insured, a summary of the process used to procure the insurance, a summary of the offers received as a result of that process (in basis points), and an analysis of the costs and financial benefits of utilizing such insurance;
- For refundings subject to these Guidelines (e.g. refundings not undertaken pursuant to section 90.10 of the Local Finance Law), schedules that set forth the debt service on refunded bonds, the debt service on the refunding bonds, and a comparison of prior refunded debt service to the new refunding debt service, showing present value and cash flow savings throughout the amortization period of the debt; if there are dis-savings in any year during the

amortization period, or if there is an extension of maturities, then a justification for the dis-savings or extension is also required; and

- For derivative and hedge transactions undertaken in connection with a private or negotiated sale, whether or not simultaneously undertaken with the sale of the obligations: (i) a detailed description of the terms of such transactions; (ii) a description of all costs incurred in connection with such transactions that are paid by the issuer of the bonds or notes, or paid from the proceeds of the bonds or notes; (iii) a financial advisor certification attesting to the fair market value of the derivative or hedge at the time the derivative or hedge is priced; and, if necessary, (iv) documentation verifying that the derivative or hedge transaction is legally authorized (i.e. statutory authorization, governing board resolution, a certified copy of policies and guidelines governing the use of derivatives and hedge transactions formally adopted by the issuer and/or such other documentation as may be required by the Bureau).

These Guidelines are intended to provide general guidance to issuers as well as the investment community with respect to the process of obtaining OSC's approval of private and negotiated sales of bonds or notes. They are not intended to address all potential issues or transactions. If you have any further questions, please address them to Joe Conroy, Assistant Comptroller, at jconroy@osc.state.ny.us or 518-474-3686, or Pat Reale, Director, at preale@osc.state.ny.us or 518-473-0370.

Public benefit corporations and public authorities that must obtain approval by the Comptroller for some or all of their private or negotiated sales of bonds or notes are listed in Appendix 1. In addition, several municipalities in the State have broad authority to issue bonds on a private or negotiated basis, and they must seek the Comptroller's approval for negotiated debt

issued under that grant of authority. A list of those municipalities is found in Appendix 2. These lists are not exhaustive and are included only for the convenience of the reader. **If you are uncertain as to whether the Comptroller’s approval is required, you should initially consult your entity’s bond counsel.**

All local governments that undertake the private or negotiated sale of advance refunding bonds (and certain current refundings) must also request the Comptroller’s approval, as described in the OSC document titled “Simplified Procedures for Local Governments Seeking the Comptroller’s Approval of Certain Matters Relating to Refunding Local Debt Pursuant to Sections 90.00 and 90.10 of the Local Finance Law,” as revised from time-to-time. Local governments that sell variable rate obligations or discount bonds at private or negotiated sale pursuant to sections 54.90(b) and 57.00(f) of the Local Finance Law must comply with rules promulgated by the Comptroller pursuant to section 57.10 of that Law as 2 NYCRR 37.

Dated: February 1, 2005

Date Amended: May 26, 2017

Appendix 1 (Revised 5/26/17)
Public Benefit Corporations and Public Authorities Required to Obtain
the Comptroller's Approval for Negotiated or Private Sales of Bonds or Notes

Statewide Public Authorities

Dormitory Authority	Public Authorities Law Sections 1680(19)(d)(4), 1680-d(4), 1680-1(5)(c) and 1680-q(5)(c), as added by Section 35 of Part GG of Chapter 57 of the Laws of 2013; Chapter 392 of the Laws of 1973, Section 6(2) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)
Energy Research & Development Authority	Public Authorities Law, Section 1860(5)
Environmental Facilities Corporation	Public Authorities Law, Section 1290(2) State Finance Law, Section 68-b(1)(g)
Housing Finance Agency	Private Housing Finance Law, Section 46(2)(c) State Finance Law, Section 68-b(1)(g)
Job Development Authority	Public Authorities Law, Section 1805(3)
New York State Tobacco Settlement Financing Corporation	Chapter 62 of the Laws of 2003, Part D3, Section 6(3)
Thruway Authority	Public Authorities Law, Section 365(2) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)
State of New York Mortgage Agency	Public Authorities Law, Section 2406(5)
State of New York Municipal Bond Bank Agency	Public Authorities Law, Section 2437(5)
Urban Development Corporation	Chapter 174 of the Laws of 1968, Section 17(7) (Unconsolidated Laws, Section 6267(7)) State Finance Law, Section 68-b(1)(g) State Finance Law, Section 69-n(1)(g)

Regional Transportation Authorities

Albany County Airport Authority	Public Authorities Law, Section 2785(4)
Albany Port District Commission	Chapter 192 of the Laws of 1925, Section 10-b, as added by Section 10-b of the Laws of 1958
Capital District Transportation Authority	Public Authorities Law, Section 1310(2)
Central New York Regional Transportation Authority	Public Authorities Law, Section 1335(2)
Metropolitan Transportation Authority	Public Authorities Law, Section 1269(2)
Monroe County Airport Authority	Public Authorities Law, Section 2759(4)
Niagara Frontier Transportation Authority	Public Authorities Law, Section 1299-i(2)
Ogdensburg Bridge and Port Authority	Public Authorities Law, Sections 706(9) and 727
Rochester-Genesee Regional Transportation Authority	Public Authorities Law, Section 1299-kk(2)
Syracuse Regional Airport Authority	Public Authorities Law, Section 2799-JJJ(4)(g)

Fiscal Stability Authorities

Buffalo Fiscal Stability Authority	Public Authorities Law, Section 3862(5)
Erie County Fiscal Stability Authority	Public Authorities Law, Section 3962(5)
Municipal Assistance Corporation for the City of Troy	Public Authorities Law, Section 3012(1)(E)
Nassau County Interim Finance Authority	Public Authorities Law, Section 3656(5)

Other Financing Authorities

New York City Transitional Finance Authority	Public Authorities Law, Section 2799-gg(5)
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Municipal/Regional Utility Authorities

Albany Municipal Water Finance Authority	Public Authorities Law, Section 1115-n(3)
Buffalo Sewer Authority	Public Authorities Law, Section 1187(2)
Cayuga County Water and Sewer Authority	Public Authorities Law, Section 1199-hhhh(4), as added by Chapter 195 of the Laws of 1995
Clifton Park Water Authority	Public Authorities Law, Section 1120-h(3)
Dutchess County Water and Wastewater Authority	Public Authorities Law, Section 1128(3)(a), as amended by Chapter 597 of the Laws of 1992
Erie County Water Authority	Public Authorities Law, Section 1056(2)
Green Island Power Authority	Public Authorities Law, Section 1020-h(3), as added by Chapter 807 of the Laws of 1986
Livingston County Water and Sewer Authority	Public Authorities Law, Section 1199-gggg(4), as added by Chapter 411 of the Laws of 1995
Long Island Power Authority	Public Authorities Law, Section 1020-k(4), as added by Chapter 517 of the Laws of 1986
Nassau County Sewer and Storm Water Finance Authority	Public Authorities Law, Section 1232-g(2)
Niagara Falls Public Water Authority	Public Authorities Law, Section 1230-m(3)
North Country Power Authority	Public Authorities Law, Section 1021-i(5)
Onondaga County Water Authority	Public Authorities Law, Section 1156(2)
Orange County Water Authority	Public Authorities Law, Section 1199-ii(3), as added by Chapter 709 of the Laws of 1987
Rensselaer County Water and Sewer Authority	Public Authorities Law, Section 1199-h(3)
Saratoga County Water Authority	Public Authorities Law, Section 1199-hhh(3)

Town of Wilton Water and Sewer Authority	Public Authorities Law, Section 1129(3), as added by Chapter 595 of the Laws of 1991
Upper Mohawk Valley Regional Water Finance Authority	Public Authorities Law, Section 1226-l(4)
Water Authority of Southeastern Nassau County	Public Authorities Law, Section 1174-h(3)(a)
Water Authority of Western Nassau County	Public Authorities Law, Section 1198-h(3)(a)
Water Authority of Great Neck North	Public Authorities Law, Section 1197-g(3)(a)
Wayne County Water and Sewer Authority	Public Authorities Law, Section 1199-hh(3)
Authorities formed pursuant to the NYS Local Water and Sewer Authority Act	Public Authorities Law, Section 1196-f(3)

Solid Waste and Resource Recovery Authorities

Alfred, Almond, Hornellsville Sewer Authority	Public Authorities Law, Section 1147-k(4)
County of Franklin Solid Waste Management Authority	Public Authorities Law, Section 2051-h(2)
Dutchess County Resource Recovery Agency	Public Authorities Law, Section 2047-h(2)
Eastern Rensselaer County Solid Waste Management Authority	Public Authorities Law, Section 2050-hh(2)
Montgomery, Otsego, Schoharie Solid Waste Management Authority	Public Authorities Law, Section 2041-g(2)
Oneida-Herkimer Solid Waste Management Authority	Public Authorities Law, Section 2049-hh(2)
Onondaga County Resource Recovery Agency	Public Authorities Law, Section 2045-h(2)
Rockland County Solid Waste Management Authority	Public Authorities Law, Section 2053-j(2)
Town of Islip Resource Recovery Agency	Public Authorities Law, Section 2046-g(2)
Town of North Hempstead Solid Waste Management Authority	Public Authorities Law, Section 2049-h(2)

Ulster County Resource Recovery Agency Public Authorities Law, Section 2050-h(2)

Parking Authorities

City of Albany Parking Authority Public Authorities Law, Section 1493-i(2)

City of Yonkers Parking Authority Public Authorities Law, Section 1596-i(2)

Harrison Parking Authority Public Authorities Law, Section 1570-h(4)(e)

Middletown Parking Authority Public Authorities Law, Section 1621-i(2)

Syracuse Parking Authority Public Authorities Law, Section 1475-i(4)(e)

Village of Nyack Parking Authority Public Authorities Law, Section 1622-i(2)

White Plains Parking Authority Public Authorities Law, Section 1433(2)

Regional Development, Recreation, Health Care and Cultural Authorities

Albany Convention Center Authority Public Authorities Law, Section 2675-j(3)(e)

Clifton-Fine Health Care Corporation Public Authorities Law, Section 3608(4)(e)

Development Authority of the North Country Public Authorities Law, Section 2711(5)

Erie County Medical Center Corporation Public Authorities Law, Section 3633 (4)(f)

Greater Rochester Sports Authority Public Authorities Law, Section 2582(4)(e)

Long Island Market Authority Public Authorities Law, Section 906(4)(f)

Nassau Health Care Corporation Public Authorities Law, Section 3407(4)

New York Convention Center Development Corporation Section 5-a(3) of Chapter 35 of the Laws of 1979, as added by Chapter 3 of the Laws of 2004

Roswell Park Cancer Institute Corporation Public Authorities Law, Section 3560(6)(b)

Schenectady Metroplex Development Authority Public Authorities Law, Section 2665(4)(e)

Suffolk County Judicial Facilities Agency	Public Authorities Law, Section 2350-g(4)(e)
Trust for Cultural Resources of the City of New York	Arts and Cultural Affairs Law, Title E, NYS Cultural Resources Act, Section 20.17(6)
Trust for Cultural Resources of the County of Onondaga	Arts and Cultural Affairs Law, Title E, NYS Cultural Resources Act, Section 20.17(6)
United Nations Development Corporation	Chapter 345 of the Laws of 1968, Section 10-a
Upper Mohawk Valley Memorial Auditorium Authority	Public Authorities Law, Section 1945(4)
Westchester County Health Care Corporation	Public Authorities Law, Section 3308(4)(f)

Off-Track Betting Corporations

Capital District Off-Track Betting Corporation	Debt approval requirement for all Regional OTBs (except for New York City) found in the Racing, Pari-Mutuel Wagering and Breeding Law, Section 508(3)
Catskill Off-Track Betting Corporation	
Nassau Regional Off-Track Betting Corporation	
Suffolk Regional Off-Track Betting Corporation	
Western Regional Off-Track Betting Corporation	
New York City Off-Track Betting Corporation	

Appendix 2 (Revised 5/26/17)
Local Governments Required to Obtain the Comptroller's
Approval for Negotiated or Private Sales of Bonds or Notes

New York City	Local Finance Law, Sections 54.10(a), 57.00(a)
City of Buffalo	Local Finance Law, Section 54.30, 57.00(a)
City of Yonkers	Local Finance Law, Section 54.40
County of Erie	Local Finance Law, Section 54.50
County of Nassau	Local Finance Law, Section 57.00(a)
General Authorization for Municipalities and School Districts to Liquidate Operating Deficits	Local Finance Law, Section 10.10(g)
General Authorization for Municipalities to issue Tax Increment Bonds or Notes	General Municipal Law, Section 970-o (c)